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No. 112, Original

In The Supreme Court
Of The United States

October Term, 1987

STATE OF WYOMING,
Plaintiff,
vs.
STATE OF OKLAHOMA,
Defendant.

ON THE REPORT OF THE SPECIAL MASTER
DATED JUNE 29, 1990

CORRECTED EXCEPTIONS OF THE STATE OF WYOMING TO THE REPORT OF THE SPECIAL MASTER

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March, 1991

Exceptions of the State of Wyoming

The State of Wyoming excepts to the Special Master's Report dated June 29, 1990, as follows:

EXCEPTION NO. 1

The State of Wyoming excepts to the Special Master's recommendation that Wyoming's claim as to the Grand River Dam Authority be dismissed without prejudice.

EXCEPTION NO. 2

The State of Wyoming excepts to the Special Master's finding that the Act of March 26, 1986, Chapter 43, 1986 Okla. Laws 74, is severable and is, therefore, constitutional as applied to state-owned utilities.

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No. 112, Original

In The Supreme Court
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October Term, 1987

STATE OF WYOMING,
Plaintiff,
vs.
STATE OF OKLAHOMA,
Defendant.

CORRECTED BRIEF FOR THE STATE OF WYOMING IN SUPPORT OF EXCEPTIONS

OPINION BELOW

The Report of the Special Master was filed on June 29, 1990.

JURISDICTION

The Court has original and exclusive jurisdiction pursuant to article III, § 2, cl. 2, of the United States Constitution and 28 U.S.C. 1251(a)(1983).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution
article I, § 8, cl. 3

> The congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

OKLA. STAT., tit. 45, § 939 (Supp. 1986)
Coal-fired electric generating plants - Burning Oklahoma Coal.

All entities providing electric power for sale to the consumer in Oklahoma and generating said power from coal-fired plants located in Oklahoma shall burn a mixture of coal that contains a minimum of ten percent (10%) Oklahoma mined coal, as calculated on a BTU ("British Thermal Unit") basis.

OKLA. STAT., tit. 45, § 939.1 (Supp. 1986)
Cost increases to consumers and impairment of certain contracts prohibited.

The cost to the entity shall not increase cost to the consumer or exceed the energy cost of existing long-term contracts for out-of-state coal preference including preference given Oklahoma vendors as provided in Section 85.32 of Title 74 of the Oklahoma statutes.

STATEMENT OF THE CASE

A. *Introduction.*

This case concerns the State of Wyoming's challenge to an Oklahoma statute (the Oklahoma Act) which interferes with the interstate sale of coal produced in Wyoming.

On June 30, 1988, the Court granted the State of Wyoming leave to file its complaint for an original action, over Oklahoma's objections. *State of Wyoming, Plaintiff, v. State of Oklahoma, Defendant,* No. 112, 487 U.S. 1231 (1988). Oklahoma subsequently filed a motion to dismiss challenging Wyoming's standing to file its complaint. The Court denied the motion and permitted Oklahoma to file an

answer. *State of Wyoming, Plaintiff, v. State of Oklahoma, Defendant,* No. 112, 488 U.S. 921 (1988). The Court appointed the Honorable Philip W. Tone as Special Master. *State of Wyoming, Plaintiff, v. State of Oklahoma, Defendant,* No. 112, ____ U.S. ____, 109 S.Ct. 1334 (1989).

Both parties filed motions for summary judgment, which were accompanied by a Stipulation of Facts, affidavits and other supporting material. The Special Master granted Wyoming's motion for summary judgment; he determined that Wyoming had standing to bring the action and that so far as privately owned electrical utilities were concerned, the Oklahoma statute violated the Commerce Clause. The Master decided that the the statute, as applied to a state owned utility, was valid. Report of Special Master, p. 34. The Report of the Special Master was received and ordered filed by the Court. *State of Wyoming, Plaintiff v. State of Oklahoma, Defendant,* No. 112, ____ U.S. ____, 111 S.Ct. 31 (1990).

After the Special Master filed his report, the parties were satisfied with the conclusions and recommended decision. Instead of taking exceptions to the report, the parties agreed to a proposed order which was submitted to the Master. The Court rejected that approach and advised the parties by letter dated January 22, 1991, that it would not be proper to enter the proposed decree, because "it adjudicates, without briefing and oral argument the constitutionality of the Oklahoma statute at issue in this case." The Court further suggested that the parties could resolve the case by an agreement that the Oklahoma statute would not be applied and that the case would be dismissed.

Because other states have adopted or are considering similar protectionist legislation, the State of Wyoming

desires to have a final adjudication on the constitutionality of the statute. Consequently, Wyoming requested a briefing schedule, which the Court set. *State of Wyoming, Plaintiff v. State of Oklahoma, Defendant,* No. 112, ____ U.S. ____, 111 S.Ct. 1100 (1991). While Wyoming agrees with the Special Master's recommendation that the Oklahoma law be found unconstitutional, it disagrees with his decision that the statute is valid as applied to state owned utilities.

B. *Impact of the Oklahoma Act on the State of Wyoming.*

OKLA. STAT., tit. 45, § 939 (Supp. 1986) (the Oklahoma Act) requires that Oklahoma coal fired electrical generating utilities purchase at least 10% of their coal from mines within Oklahoma.

Much of the coal consumed in this country is mined in Wyoming. In 1988, Wyoming was the nation's leading coal producer. (Stipulation, para. 29; Appendix, A-18).[1] Coal production in Wyoming has dramatically increased in the last five years. In 1983, 107,902,764 tons were mined. In 1988, 163,815,884 tons of coal were removed. Estimates based on first quarter production were that 160,789,628 tons would be extracted in 1989. (Stipulation, para. 7; Appendix, A-5).[2]

---

1. Virtually all of the salient facts were agreed to by the parties in a Stipulation of Facts which was prepared for both states' motions for summary judgment. The references are to that Stipulation, which is attached as an Appendix. The Master's recommended findings of fact were based on the Stipulation and unrebutted submissions. Master's Report, pp. 2-10.

2. Wyoming continues to lead the nation in coal production. During 1990, 185,762,000 tons were mined in Wyoming, an increase of 8.3%. Energy Information Administration, *Weekly Coal Production,* DOE/EIA-0218 (91-03) at 4 (1991).

Wyoming exports coal to nineteen other states, including Oklahoma. (Stipulation, para. 27; Appendix, A-18). Use of coal within Wyoming in 1988 constituted only 14.6% of the total tonnage of coal sold by Wyoming producers. (Stipulation, Exhibit 4). Eight percent of the coal produced from Wyoming coal mines in 1988 was shipped to Oklahoma. (Stipulation, Exhibit 4). Oklahoma is the third largest importer of Wyoming coal. (Stipulation, Exhibit 4). From 1981 through 1986, four Oklahoma electric utilities, which operate ten coal-fired plants, purchased nearly 100% of their coal from Wyoming mines.[3]

The four Oklahoma electric uilities that are subject to the Act are the Grand River Dam Authority, Oklahoma Gas and Electric, Public Service of Oklahoma and Western Farmers' Electrical Cooperative. (Stipulation, para. 8; Appendix, A-5). Only one of the ten plants is equipped with scrubbers to allow the burning of high sulfur coal. (Stipulation, para. 8; Appendix, A-5).

Since 1980, eight companies have shipped Wyoming coal into Oklahoma. (Stipulation, para. 9; Appendix, A-6). These companies are: Kerr-McGee, Mobil Coal Production Inc., Rochelle Coal Company (subsidiary of Peabody Coal Co.), Triton Coal company (subsidiary of Shell Mining), Exxon Coal USA, Amax Mining, Thunder Basin Coal Company (subsidiary of ARCO), and NERCO. The mines of all these companies are located in the Powder River Basin of Wyoming.

The State of Wyoming imposes a severance tax on the extraction of coal. WYO. STAT. §§ 39-6-301 to 39-6-307

3. Special Master's Report, p. 6; Energy Information Administration, DOE/EIA-0125(86/4Q), *Coal Distribution*, January-December, 1986 (1987).

(1977). Because severance taxes are calculated as a percentage of the sales price of coal, the amount of severance taxes collected depends directly on the sale of Wyoming coal by Wyoming producers. The severance tax is used to finance various state and local governmental functions in Wyoming. (Stipulation, para. 6; Appendix A-4). Consequently, a reduction in coal severance tax payments has a significant effect on Wyoming's state and local revenues. An ad valorem tax is also imposed on coal. WYO. STAT. §§ 39-2-201 to 39-2-202 (1977). The ad valorem tax is used to finance various local governmental functions, as set out in WYO. STAT. § 39-2-402(b).[4]

Wyoming also has another source of revenue from coal production. Under the provisions of the Mineral Leasing Act, 30 U.S.C. §§ 181, 191 (1983), Wyoming receives 50% of the royalties paid on coal which is mined on federal lands. Approximately 52% of the land in Wyoming is federally owned.[5] In 1986, Wyoming received $28,486,778 in coal royalties from production on federal lands located in Wyoming. In 1987, that figure was $60,894,526.[6] These funds are used for state and local government purposes as set out in WYO. STAT. § 9-4-601 (Cum. Supp. 1989).

4. The Oklahoma Act has had a significant effect on the payment of severance and ad valorem taxes. The Director of the Minerals Tax Division, Wyoming Department of Revenue and Taxation, has estimated that Wyoming lost $535,886.00 in severance taxes for 1987, $542,352.00 for 1988, and $87,130.00 from January-April, 1989, for a total of $1,165,398.00. Affidavit of Richard J. Marble, at 3., Appendix to Motion of the State of Wyoming for Summary Judgment.

5. U.S. General Accounting Office, *Alternatives for Achieving Greater Equities in Federal Land Payment Programs*, PAD 79-64, Washington, D.C., September 25, 1979.

6. U.S. Department of the Interior, *Minerals Management Service, Mineral Revenues: The 1987 Report on Receipts from Federal and Indian Leases*, (October 1988).

C. *Special Master's Conclusion*

The Report of Special Master dated June 29, 1990, contained these conclusions:

1. Wyoming should be held to have standing to bring this action.

2. Wyoming's motion for summary judgment should be granted and declaratory and injunctive relief should issue with respect to the Act as it applies to Oklahoma Gas and Electric Company, Public Service Company of Oklahoma, and Oklahoma and Western Farmers Electric Cooperative, the privately owned utilities, on the ground that the Act is unconstitutional under the Commerce Clause. As to Grand River Dam Authority, the action should be dismissed without prejudice to its right to assert its claim in an appropriate forum; alternatively, the Act should be held valid insofar as it applies to the Grand River Dam Authority.

3. Oklahoma's motion for summary judgment should be denied.

Special Master's Report, p. 34.

The State of Wyoming fully supports the Special Master's recommendations, except for the limited exceptions identified in this brief.

SUMMARY OF THE ARGUMENT

The Special Master recommended that the United States Supreme Court not exercise jurisdiction over this matter with respect to Wyoming's claim against the Grand River Dam Authority. According to the Special Master, the Oklahoma law could constitutionally regulate the Grand River Dam Authority under the market participant doctrine and, therefore, did not violate the Commerce Clause of the United States Constitution. He reasoned that a determination concerning severability of the statute must first be made at the state court level. Because the severability of the statute had not been ruled on by Oklahoma courts and because the United States Supreme Court usually defers to state courts on such questions, the Special Master reasoned that Oklahoma courts must first have an opportunity to rule on the question.

Wyoming takes exception to this view. In the context of an exclusive, original action before the United States Supreme Court, it would be improper to remand a matter to a state supreme court when the matter is properly before the United States Supreme Court.

The United States Supreme Court must exercise jurisdiction over Wyoming's claim that Oklahoma cannot require the Grand River Dam Authority to burn Oklahoma produced coal. The statute in question does not contain separate portions, one which is applicable to privately owned utilities and another to publicly owned utilities. It is one statute which must be applied to all utilities uniformly. To find the statute constitutional would mean that the Court has judicially legislated an amendment to the statute, with the result that the general phrase "all entities" is deleted and the phrase "all state owned utilities" is inserted. The

concept of severability does not extend so far as to allow such judicial reinterpretation.

ARGUMENT

I. THE CONSTITUTIONALITY OF THE OKLAHOMA ACT CANNOT BE SAVED BY APPLYING THE SEVERABILITY DOCTRINE.

In an alternative recommendation, the Special Master took the position that, because the Grand River Dam Authority is a state owned utility, it could be compelled to comply with the terms of the Oklahoma Act under the market participant doctrine. Wyoming does not dispute that Oklahoma's legislature could write a constitutional statute applying only to the Grand River Dam Authority, but it is only the legislature that may exercise such authority. The doctrine of severability cannot be used to rewrite the statute.

The Oklahoma Act states quite clearly that "all entities providing electric power for sale to the consumer in Oklahoma and generating said power from coal fired plants located in Oklahoma" must purchase at least ten percent (10%) Oklahoma mined coal for its generators to burn. OKLA. STAT., tit. 45, § 939 (Supp. 1986). It is true that courts will regularly construe statutes in a manner that renders them constitutional, but there are limits to such endeavors.

The Oklahoma Act cannot be found to be constitutional, unless it is judicially rewritten. The Oklahoma legislature clearly stated its intent that the Act would apply to "all entities." Changing this express language to read "the Grand River Dam Authority" requires more than mere con-

struction and must be done, if at all, only by the Oklahoma legislature.

A statute is deemed to be severable if, after an invalid portion of it has been stricken, the remaining provisions are found to be self-sustaining and capable of separate enforcement without regard to the stricken portion. 2 *Sutherland Statutory Construction*, § 44.04 (C. Sands 4th ed. 1973). If a statute is severable, it may be saved constitutionally. But if a statute must be rewritten to be saved, it is not capable of being severed and, therefore, must fall. This principle was first articulated in *United States v. Reese*, 2 Otto 214, 92 U.S. 214, 221 (1875).

As Justice Oliver Wendell Holmes explained in *United States v. Ju Toy*, 198 U.S. 253, 262 (1905), a statute "must be valid as to all that it embraces, or altogether void." If the words of a statute are of a general nature, it cannot be rewritten so as to apply only to a narrower class in order to save its constitutionality. This is not, as Justice Holmes might observe "saving what remains," but rather is judicial legislation.

Legislatures may fashion severability clauses which provide that if application of a statute to some classes is found unconstitutional, severability of those classes permits application of the act to other acceptable classes. This acceptable type of severability clause was described in *I.N.S. v. Chadha*, 462 U.S. 919, 931-932 (1983):

> If any particular provision of this act, or any application thereof to any person or circumstance, is held invalid, the remainder of the act and the application of such provision to other persons or circumstances shall not be affected thereby.

If the Oklahoma legislature had written its severability clause as Congress wrote the severability clause in *Chadha*, there would be no problem.

By contrast, the Oklahoma legislature only prescribed that unconstitutional portions of the statute were to be severed:

> The provisions of this act are severable and if any part or provision shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this act.

Act of March 26, 1986, Ch. 43, 1986 Okla. Laws 74.

There was no intention expressed by the Oklahoma legislature to sever the applicability of the Oklahoma Act, even though this could have been easily done, using the language approved in *I.N.S. v. Chadha*, 462 U.S. at 931-932. The Special Master's recommendation that the Act be rewritten so that it applies only to the Grand River Dam Authority is not supported by the Act's severability clause. Neither is the recommendation supported by Oklahoma law.

The Oklahoma cases relied upon by the Special Master do not contradict the basic principle that rewriting a statutory provision goes beyond the concept of severability and cannot be condoned by the courts. The Special Master's holding that severability was proper is not correct under decisions of this Court or the Supreme Court of Oklahoma. *Englebrecht v. Day*, 208 P.2d 538, 544 (1949); *Williams v. Oklahoma*, 542 P.2d 554, 595-96 (Okla. 1975), *rev'd.* on other grounds, 428 U.S. 907 (1975); *Grand River Dam Authority v. Oklahoma*, 645 P.2d 1011, 1018 (Okla. 1982), and *Udall v. Udall*, 613 P.2d 742, 745 (Okla. 1980).

The Oklahoma Supreme Court has taken a conservative approach to judicial tampering with statutes. *Udall v. Udall*, 613 P.2d at 745. Because the Oklahoma Act has universal applicability, it is apparent that the Oklahoma Supreme Court would not undertake the task of reading in an exception to the applicability of the statute for all privately held electric utilities. *Seventeen Hundred Peoria, Inc., v. City of Tulsa*, 422 P.2d 840, 843 (Okla. 1966). An amendment of a law by judicial construction is something the Oklahoma Supreme Court has refused to do. *City of Bristow ex rel. Hedges v. Groom*, 151 P.2d 936, 940 (1944).

The Oklahoma Act has no independent clauses or sections that can be excised from the remainder of the offending statute. The Act applies to "all entities"; there is nothing that can be removed from that phrase to limit its applications to state owned utilities. Therefore, no portion of the Act can be saved. The severability clause in the Act is of no consequence under these circumstances, because no part of the Act is sufficiently independent from the remainder of the Act to warrant separation. Nothing would remain after the unconstitutional provisions are stricken.

II. THE COURT SHOULD DECIDE WHETHER THE OKLAHOMA STATUTE, WHICH MANDATES THE USE OF OKLAHOMA COAL, CAN BE APPLIED TO A STATE OWNED ELECTRICAL GENERATING FACILITY.

The Special Master has recommended that, as to the Grand River Dam Authority, the action be dismissed without prejudice to Wyoming's right to assert its claim "in an appropriate forum." While it is true that the United States Supreme Court may defer to the judgments of state courts on the question of severability of state statutes, such defer-

ence is not mandatory. This Court has decided such issues in appropriate cases. *Champlin Refining Co. v. Corporation Comm. of Oklahoma,* 286 U.S. 210, 238 (1932); *Dorchy v. Kansas,* 264 U.S. 286, 291 (1924); *Guinn v. United States,* 238 U.S. 347, 366 (1915); and *Myers v. Anderson,* 238 U.S. 368, 381 (1915).

This issue appears to be one of first impression because the Court has not had the issue of severability of a state statute before it, in the context of an exclusive, original action. Because this is an original action, there is no lower tribunal to which the matter can be remanded. This Court should decide, based upon whatever Oklahoma law on the issue of severability is available, Wyoming's claim that the statute is unconstitutional and cannot be severed in its application.

The Special Master cites *Hooper v. Bernalillo County Assessor,* 472 U.S. 612, 624 (1985) and *Zobel v. Williams,* 457 U.S. 55, 64-65 (1982), for the proposition that state courts must resolve issues of severability of state statutes. While the Court found in those cases that it was appropriate to remand the issue of severability to the state courts for resolution, an exclusive, original action cannot be remanded to any other forum for further determination. Therefore, dismissal without prejudice is not a justifiable alternative. Rather, the issue must be addressed by this Court.

The framers of the United States Constitution must have contemplated that requiring a state to bring an action against another state, in that latter forum state, was inherently unfair. They determined that the only fair tribunal to hear disputes between states was the United States Supreme Court. A. Hamilton, *The Federalist* No. 80 (1788);

L. Tribe, *American Constitutional Law,* fn. 4, at 43 (2d ed. 1988).

To require Wyoming to ask Oklahoma courts to rule on the nature of the severability of its own state statute would be inherently unfair and prejudicial to Wyoming. The United States Supreme Court is an impartial forum and the one which must resolve this dispute.

CONCLUSION

Instead of entering judgment with respect to only the three privately owned utilities in Oklahoma or attempting to judicially rewrite the Act so that it applies only to the Grand River Dam Authority, this Court should declare that the entire Act is unconstitutional on its face and is therefore invalid.

Respectfully submitted,

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APPENDIX TO
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STIPULATION OF THE FACTS

COME NOW the parties in the above-entitled matter, the State of Wyoming and the State of Oklahoma, and hereby stipulate that the following facts are agreed upon as between the parties in this litigation. This stipulation does not constitute an admission by either party that the facts set forth herein are relevant or material to this litigation. Stipulations relating to statutes of the respective parties refer to the statutes and the statutory language as of the date of these stipulations. The stipulations are as follows:

1. On March 26, 1986, the Oklahoma legislature passed S.B. No. 458, which has been codified as OKLA. STAT. title 45, Sections 939 and 939.1 (Supp. 1986) (hereinafter referred to as "the Act"). It became effective in Oklahoma on January 1, 1987.

2. The Oklahoma legislature passed the following resolutions on the following dates:

a. Senate Resolution No. 21, 40th leg., passed June 11, 1985. 1985 Okla. Sess. Laws, p. 1694. Attached as Exhibit 1.

b. Senate Concurrent Resolution No. 82, passed March 31, 1988. 1988 Okla. Sess. Laws, p. 1915. Attached as Exhibit 2.

3. In Wyoming, a severance tax is imposed by the State of Wyoming upon the privilege of severing or extracting coal within the State of Wyoming. WYO. STAT. §§ 39-6-301 to 39-6-308 (1977), as amended.

4. Wyoming's coal severance tax is not assessed against Oklahoma utilities. The severance tax is assessed against the person or companies severing or extracting the coal in Wyoming. The tax is assessed whether the coal is sold or not sold.

5. The valuation of the coal extracted for severance tax purposes is based on the fair market value of the coal. WYO. STAT. § 39-2-202 (1977) sets forth the method of determining valuation of coal for severance tax purposes.

6. Severance tax revenues collected on Wyoming coal are currently used in Wyoming in the following ways, according to WYO. STAT. § 39-6-302:

> Coal severance tax monies, totalling 8.5% of the assessed valuation of the coal, are currently distributed to the following State of Wyoming accounts:
>
> > 2% - to the permanent mineral trust fund and the budget reserve account, WYO. STAT. § 39-6-302(a);

2% - to the general fund, WYO. STAT. § 39-6-302(b);

1.5% - to the water development account or general fund, WYO. STAT. § 39-6-0302(c);

1% - to the highway fund, WYO. STAT. § 39-6-302(d);

.5% - to the permanent mineral trust fund, WYO. STAT. § 39-6-302(e);
1.5% - to the capitol facilities revenue account, WYO. STAT. § 39-6-302(f).

This severance tax rate of 8.5% became effective in 1988. Between 1983 and 1987, the severance tax rate was 10.5%.

7. The amount of coal severed in the State of Wyoming from 1983 through March of 1989 is attached hereto as Exhibit 3. This exhibit also shows the percentage increase or decline for each year.

8. The following Oklahoma electric utilities are subject to the requirements of the Act.

Grand River Dam Authority (G.R.D.A.)

Oklahoma Gas & Electric (OG&E)

Public Service Company of Oklahoma (P.S.O.)

Western Farmers Electric Cooperative (W.F.E.C.)

The following chart describes various features of the affected utilities:

Company	Plant/ Generating Units	Scrubbers*	Gross Generating Capacity (Megawatts)	On-Line
G.R.D.A.	GRDA-1	No	490.0	1981
	GRDA-2	Yes	520.0	1986
OG&E	Muskogee-4	No	572.4	1977
	Muskogee-5	No	572.4	1978
	Muskogee-6	No	572.4	1984
	Sooner-1	No	568.8	1979
	Sooner-2	No	568.8	1980
P.S.O.	Northeastern-3	No	472.5	1979
	Northeastern-4	No	472.5	1980
W.R.C.E.	Hugo-1	No	400.0	1981
Total Gross Generating Capacity			5209.8	

* A scrubber is the common name of a "flue gas desulfurization unit" which is advice designed to remove sulfur emissions from a coal-fired electric plant.

9. The following mining companies which operate coal mines in Wyoming have shipped coal to Oklahoma electric utilities since 1980:

	Coal Company	Current Long Term Wyoming Coal Supplier To:
A.	Kerr-McGee Coal Corporation	P.S.O.
	1. Jacobs Ranch Mine	
	2. Clovis Point Mine	
B.	Mobil Coal Producing, Inc.	G.R.D.A.
	1. Caballo Rojo Mine	

C.	Rochelle Coal Company (subsidiary of Peabody Coal) 1. Powder River Coal Mine	
D.	Triton Coal Company (subsidiary of Shell Mining) 1. Buckskin Coal Mine	W.F.E.C.
E.	Exxon Coal USA 1. Rawhide Coal Mine	G.R.D.A.
F.	Amax Mining 1. Bell Ayr Mine 2. Eagle Butte Mine	
G.	Thunder Basin Coal Company (subsidiary of ARCO Mining) 1. Black Thunder Coal Mine 2. Coal Creek Mine	O.G.&E.
H.	NERCO 1. Antelope Mine	

10. For the Grand River Dam Authority, the percentage of total coal purchased by the utility and the state of origin are given below:

	Coal Purchased From			
	Wyoming		Oklahoma	
	Short Tons (000)	Percent	Short Tons (000)	Percent
1981	1,236.7	100.0	0.0	0.0
1982	1,679.5	100.0	0.0	0.0
1983	1,522.4	100.0	0.0	0.0
1984	2,112.7	99.5	10.1	0.5
1985	2,278.8	100.0	0.0	0.0
1986	2,499.8	96.8	83.5	3.2
1987	2,054.1	95.5	96.4	4.5
1988	2,703.9	96.6	96.9	3.4
1989				
Jan-Apr	1,273.9	97.4	34.5	2.6

11. For Oklahoma Gas and Electric Company, the percentage of total coal purchased by the utility and the state of origin are given below:

	Coal Purchased From			
	Wyoming		Oklahoma	
	Short Tons (000)	Percent	Short Tons (000)	Percent
1980	5,160.9	100.0	0.0	0.0
1981	5,022.5	100.0	0.0	0.0
1982	5,277.5	100.0	0.0	0.0
1983	4,837.0	100.0	0.0	0.0
1984	6,252.8	100.0	0.0	0.0
1985	6,484.5	99.6	24.2	0.4
1986	5,689.9	98.0	116.2	2.0
1987	5,699.7	93.9	369.8	6.1
1988	5,711.1	92.6	457.5	7.4
1989				
Jan-Apr	2,120.0	96.7	73.1	3.3

12. For the Public Service Company of Oklahoma, the percentage of total coal purchased by the utility and the state of origin are given below:

	Coal Purchased From			
	Wyoming		Oklahoma	
	Short Tons (000)	Percent	Short Tons (000)	Percent
1980	2,838.0	100.0	0.0	0.0
1981	2,765.0	100.0	0.0	0.0
1982	2,593.0	100.0	0.0	0.0
1983	2,816.0	100.0	0.0	0.0
1984	3,281.0	99.7	10.0	0.3
1985	3,044.0	100.0	0.0	0.0
1986	2,865.0	98.1	56.0	1.9
1987	2,786.0	94.3	168.0	5.7
1988	2,583.0	96.5	93.0	3.5
1989				
Jan-Apr	837.0	96.8	28.0	3.2

13. For the Western Farmers Electric Cooperative, the percentage of total coal purchased by the utility and the state of origin are given below:

	Coal Purchased From Wyoming		Oklahoma	
	Short Tons (000)	Percent	Short Tons (000)	Percent
1981	228.0	100.0	0.0	0.0
1982	1,173.3	100.0	0.0	0.0
1983	1,495.8	100.0	0.0	0.0
1984	941.4	100.0	0.0	0.0
1985	1,063.0	100.0	0.0	0.0
1986	696.6	100.0	0.0	0.0
1987	894.6	94.2	55.3	5.8
1988	1,611.9	95.7	71.6	4.3
1989				
Jan-Apr	369.4	97.6	23.3	5.4

14. The average cost of Wyoming coal (including the cost of transportation) delivered to Oklahoma electric utilities has ranged between the following prices from 1982 through 1988. Prices are expressed in cents per million BTU (MMBTU). A BTU is a "British Thermal Unit" which is a measurement of heat energy.

Average Delivered Price (cents per MMBTU)

Year	GRDA	OG&E (Muskogee)	OG&E (Sooner)	PSO	WFEC
1982	171.8	142.1	150.8	183.1	206.3
1983	175.5	151.5	157.5	190.3	205.3
1984	152.5	181.0	163.8	201.1	207.8
1985	140.0	159.1	163.2	202.9	172.2
1986	138.6	156.0	164.6	193.0	169.8
1987	145.2	146.2	161.2	164.7	175.5
1988	104.1	151.3	165.2	161.7	172.4
1989					
Jan-Apr	96.3	132.6	138.8	163.4	196.6

15. The spot price for Wyoming coal sold to Oklahoma electric utilities, from 1984 to 1987, has been as follows:

Average Delivered Price (cents per MMBTU)

	1984	1985	1986	1987
GRDA	152.72	128.06	N/A	N/A
OG&E (Muskogee)	145.16	145.65	126.22	101.42
OG&E (Sooner)	148.09	146.80	N/A	N/A

16. The spot tonnage for Wyoming coal sold to Oklahoma electric utilities from, 1984 to 1987, has been as follows:

(000 tons)
Average Delivered Price (cents per MMBTU)

	1984	1985	1986	1987
GRDA	11.53	469.33	N/A	N/A
OG&E (Muskogee)	447.70	819.74	102.12	99.25
OG&E (Sooner)	44.36	22.53	N/A	N/A

17. No Wyoming spot coal was sold to Oklahoma electric utilities in 1988. The P.S.O. and W.F.E.C. utilities have not purchased Wyoming spot coal from 1981 to April, 1989.

18. For Oklahoma coal delivered to Oklahoma electric utilities, the price for coal (including transportation costs) delivered to Oklahoma electric utilities has ranged in price, from 1984 to 1989, as follows:

Average Delivered Price (cents per MMBTU)

Year	GRDA	OG&E (Muskogee)	OG&E (Sooner)	PSO	WFEC
1984	154.8	**	**	192.8	**
1985	**	163.0	**	**	**
1986	120.9	145.7	166.6	182.3	**
1987	107.8	137.6	164.9	170.9	184.5
1988	107.5	138.0	168.3	164.7	175.5
1989					
Jan-Apr	102.2	131.4	151.4	163.2	173.0

** No coal delivered to this Oklahoma electric utility from Oklahoma mines.

19. For the Grand River Dam Authority, the following tons of coal were purchased from each coal mine or company listed below between 1981 and 1989:

(Nos. in 1,000 tons)

1981	**Wyoming**	1. Exxon (Rawhide)	439.5
		2. Mobil (Caballo Rojo)	797.2
1982	**Wyoming**	1. Exxon (Rawhide)	1,325.9
		2. Mobil (Caballo Rojo)	353.7
1983	**Wyoming**	1. Exxon (Rawhide)	1,392.2
		2. Mobil (Caballo Rojo)	131.7
1984	**Wyoming**	1. Exxon (Rawhide)	1,651.9
		2. Mobil (Caballo Rojo)	460.8
	Oklahoma	1. American Central Energy Inc. (Ranchers)	10.1
1985	**Wyoming**	1. Exxon (Rawhide)	2,201.2
		2. Mobil (Caballo Rojo)	11.2
		3. N.E.R.C.O. (Antelope)	66.3
1986	**Wyoming**	1 Exxon (Rawhide)	1,658.4
		2. Mobil (Caballo Rojo)	841.4

	Oklahoma	1.	AMAX (Rogers)	33.5
		2.	Peabody	50.0
		1.	Exxon (Rawhide)	1,640.7
		2.	Mobil (Caballo Rojo)	413.4
	Oklahoma	1.	K&R	29.5
		2.	AMAX (Rogers)	66.9
1988	Wyoming	1.	Exxon (Rawhide)	1,801.9
		2.	Mobil (Caballo Rojo)	902.0
	Oklahoma	1.	K&R	64.9
		2.	Hickory	30.0
1989	(Jan-Apr) Wyoming	1.	Exxon (Rawhide)	774.3
		2.	Mobil (Caballo Rojo)	499.6
	Oklahoma	1.	K&R	7.8
		2.	AMAX (Alluwe)	25.1
		3.	Phoenix (Phoenix #4)	1.7

20. For the Oklahoma Gas and Electric Plant at Muskogee, the following tons of coal were purchased from each coal mine listed between 1980 and 1988:

1980	Wyoming	1.	Thunder Basin Coal Co./ARCO (Black Thunder Mine)	2,362.3
		2.	AMAX (Eagle Butte)	274.5
		3.	AMAX (Belle Ayr)	464.2
1981	Wyoming	1.	Thunder Basin Coal Co./ARCO (Black Thunder Mine)	1,761.6
		2.	AMAX (Eagle Butte)	10.7
		3.	AMAX (Belle Ayr)	519.5
1982	Wyoming	1.	Thunder Basin Coal Co./ARCO (Black Thunder Mine)	2,748.6
1983	Wyoming	1.	Thunder Basin Coal Co./ARCO (Black Thunder Mine)	2,790.3

1984	**Wyoming**	1.	Thunder Basin Coal Co./ARCO (Black Thunder Mine)	2,974.3
		2.	Mobil (Caballo Rojo)	447.7
1985	**Wyoming**	1.	Thunder Basin Coal Co./ARCO (Black Thunder Mine)	2,959.9
		2.	Mobil (Caballo Rojo)	819.7
	Oklahoma	1.	Alpine #5	20.0
		2.	K&R (Ryan)	4.2
1986	**Wyoming**	1.	Thunder Basin Coal Co./ARCO (Black Thunder Mine)	2,945.1
		2.	Mobil (Caballo Rojo)	102.1
	Oklahoma	1.	Alpine #11	19.4
		2.	Interchem (Pollyanna #3)	2.6
		3.	Alpine #5	47.2
		4.	K&R (Ryan)	27.0
1987	**Wyoming**	1.	Thunder Basin Coal Co./ARCO (Black Thunder Mine)	3,138.6
		2.	Mobil (Caballo Rojo)	99.3
	Oklahoma	1.	Alpine #11	78.9
		2.	Interchem (Polly. H&O, Checotah)	16.7
		3.	K&R (Ryan, Bokoshe)	103.1
1988	**Wyoming**	1.	Thunder Basin Coal Co./ARCO (Black Thunder Mine)	3,379.5
	Oklahoma	1.	Alpine #11	85.4
		2.	Interchem (Pollyanna #5)	.7
		3.	AMAX (Pollyanna #5)	37.3
		4.	Interchem (Checotah)	46.8
		5.	Sunset	15.2
		6.	K&R (Ryan & Bokoshe)	64.9
1989	**(Jan-Apr)**			
	Wyoming	1.	Thunder Basin Coal Co./ARCO (Black Thunder Mine)	1,110.7
		2.	Rochelle Coal Co. (Powder River Coal Mine)	159.9

Oklahoma	1.	Alpine #11	4.2
	2.	Interchem (Pollyanna #5)	4.8
	3.	AMAX (Pollyanna #5)	16.0
	4.	Hickory	11.6
	5.	Sunset	18.0
	6.	Rabbit Hill	.2

21. For the Oklahoma Gas and Electric Sooner Plant near Red Rock, Oklahoma, the following tons of coal were purchased from each coal mine or company listed between 1980 and 1989:

1980	**Wyoming**	1.	Thunder Basin Coal Co./ARCO (Black Thunder Mine)	2,059.9
1981	**Wyoming**	1.	Thunder Basin Coal Co./ARCO (Black Thunder Mine)	2,733.8
1982	**Wyoming**	1.	Thunder Basin Coal Co./ARCO (Black Thunder Mine)	2,528.9
1983	**Wyoming**	1.	Thunder Basin Coal Co./ARCO (Black Thunder Mine)	2,046.7
1984	**Wyoming**	1.	Thunder Basin Coal Co./ARCO (Black Thunder Mine)	2,786.5
		2.	Mobil (Caballo Rojo)	44.4
1985	**Wyoming**	1.	Thunder Basin Coal Co./ARCO (Black Thunder Mine)	2,682.4
		2.	Mobil (Caballo Rojo)	22.5
1986	**Wyoming**	1.	Thunder Basin Coal Co./ARCO (Black Thunder Mine)	2,642.8
	Oklahoma	1.	Alpine #5	1.1
		2.	Catoosa	19.0
1987	**Wyoming**	1.	Thunder Basin Coal Co./ARCO (Black Thunder Mine)	2,461.8

	Oklahoma	1.	AMAX (Pollyanna #5)	46.9
		2.	AMAX (Rogers)	72.7
		3.	Alpine #11	51.1
1988	**Wyoming**	1.	Thunder Basin Coal Co./ARCO (Black Thunder Mine)	2,331.6
	Oklahoma	1.	Hickory	24.3
		2.	Patch (Welch)	10.0
		3.	AMAX (Pollyanna #5)	25.2
		4.	AMAX (Rogers)	104.5
		5.	Alpine #11	40.0
		6.	K&R (Bokoshe)	2.8
1989	**(Jan-Apr)**			
	Wyoming	1.	Thunder Basin Coal Co./ARCO (Black Thunder Mine)	850.6
	Oklahoma	1.	Hickory	12.3
		2.	Peabody	6.0

22. For the Public Service Company of Oklahoma, the following tons of coal were purchased from each coal mine or company listed between 1980 and 1989:

1980	**Wyoming**	1.	Kerr-McGee Coal (Jacob's Ranch)	2,773.0
		2.	Kerr-McGee Coal (Clovis Point)	65.0
1981	**Wyoming**	1.	Kerr-McGee Coal (Jacob's Ranch)	1,408.0
		2.	Kerr-McGee Coal (Clovis Point)	1,357.0
1982	**Wyoming**	1.	Kerr-McGee Coal (Jacob's Ranch)	959.0
		2.	Kerr-McGee Coal (Clovis Point)	1,634.0
1983	**Wyoming**	1.	Kerr-McGee Coal (Jacob's Ranch)	1,356.0
		2.	Kerr-McGee Coal (Clovis Point)	1,560.0

1984	Wyoming	1.	Kerr-McGee Coal (Jacob's Ranch)	2,200.0
		2.	Kerr-McGee Coal (Clovis Point)	1,081.0
1985	Wyoming	1.	Kerr-McGee Coal (Jacob's Ranch)	1,621.0
		2.	Kerr-McGee Coal (Clovis Point)	1,423.0
1986	Wyoming	1.	Kerr-McGee Coal (Jacob's Ranch)	1,475.0
		2.	Kerr-McGee Coal (Clovis Point)	1,390.0
	Oklahoma	1.	McNabb	56.0
1987	Wyoming	1.	Kerr-McGee Coal (Jacob's Ranch)	1,292.0
		2.	Kerr-McGee Coal (Clovis Point)	1,494.0
	Oklahoma	1.	McNabb	168.0
1988	Wyoming	1.	Kerr-McGee Coal (Jacob's Ranch)	2,201.0
		2.	Kerr-McGee Coal (Clovis Point)	382.0
	Oklahoma	1.	Patch (Welch)	10.0
		2.	Phoenix	20.0
		3.	K&R	8.0
		4.	McNabb	52.0
		5.	Hickory	3.0
1989	(Jan-Apr) Wyoming	1.	Kerr-McGee Coal (Jacob's Ranch)	837.0
	Oklahoma	1.	Patch	17.0
		2.	Phoenix	11.0

23. For the Western Farmers' Electric Cooperative, the following tons of coal were purchased from each coal mine or company listed between 1981 and 1989:

1981	**Wyoming**	1.	Triton Coal/Shell (Buckskin)	228.0
1982	**Wyoming**	1.	Triton Coal/Shell (Buckskin)	1,173.3
1983	**Wyoming**	1.	Triton Coal/Shell (Buckskin)	1,495.7
1984	**Wyoming**	1.	Triton Coal/Shell (Buckskin)	941.4
1985	**Wyoming**	1.	Triton Coal/Shell (Buckskin)	1,063.4
1986	**Wyoming**	1.	Triton Coal/Shell (Buckskin)	464.1
		2.	Mobil (Caballo Rojo)	232.5
1987	**Wyoming**	1.	Triton Coal/Shell (Buckskin)	894.6
	Oklahoma	1.	AMAX	55.3
1988	**Wyoming**	1.	Triton Coal/Shell (Buckskin)	1,611.9
	Oklahoma	1.	AMAX	71.7
1989	**(Jan-Apr)**			
	Wyoming	1.	Triton Coal/Shell (Buckskin)	369.4
	Oklahoma	1.	Hickory	23.4

24. The average sulfur content of coal coming from Wyoming's Powder River Basin is:

Year	Avg. Sulfur Content (Wt. Pct.)
1980	0.38
1981	0.40
1982	0.40
1983	0.40
1984	0.40
1985	0.40
1986	0.40
1987	0.38
1988	0.38

25. The average sulfur content of Oklahoma coal delivered to Oklahoma utilities is:

Year	Avg. Sulfur Content (Wt. Pct.)
1985	1.20
1986	1.86
1987	1.36
1988	1.28
1989 (Jan-Apr)	1.51

26. The average sulfur content of Oklahoma coal delivered to each of the following utilities is as follows:

(Wt. Pct.)

Year	PSO	W.F.E.C.	OG&E (Sooner)	OG&E (Muskogee)	G.R.D.A.
1984	.55	na	na	na	.58
1985	na	na	na	1.19	na
1986	.56	na	.60	1.35	3.62
1987	.58	.73	.78	1.63	3.60
1988	.51	.78	1.12	1.41	3.52
1989 (Jan-Apr)	.44	.55	1.46	1.02	3.91

27. In 1988, coal produced in Wyoming was shipped to 19 states. The percentage of tonnage shipped to each state is attached hereto as Exhibit 4.

28. Coal that is shipped from Wyoming to Oklahoma is shipped by railroad transportation. When the Act went into effect, all Wyoming coal destined for Oklahoma was shipped out of Wyoming by the Burlington Northern Railroad.

29. In 1986, Wyoming was the second leading state in the nation in coal production. In 1988, Wyoming became

the leading state in the nation in coal production. This ranking is based on total tonnage of coal produced and not upon the BTU value of the coal.

30. The Grand River Dam Authority is an agency of the State of Oklahoma.

31. The government of the State of Wyoming does not sell any coal.

32. Oklahoma coal used by Oklahoma electric utilities generally has, on the average, a higher BTU rating than Wyoming coal delivered to Oklahoma electric utilities. It would therefore, take less of this Oklahoma coal by weight to generate the same amount of energy as compared to Wyoming coal that has been delivered to Oklahoma utilities.

33. The average BTU content of Wyoming coal delivered to Oklahoma utilities since 1981 has varied between 7,760 to 8,936 per pound.

34. The average BTU content of Oklahoma coal delivered to Oklahoma utilities since 1981 has varied between 11,346 to 13,651 per pound.

Respectfully submitted this 11th day of August, 1989.

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